

**Geiger Ready-Mix Co. of Kansas City, Inc.; Geiger Ready-Mix Co. of Kansas, Inc.; Geiger Ready-Mix Co. of Missouri, Inc.; and Geiger Ready-Mix Co., Inc.; a Single Employer and Building Material, Excavating, Heavy Haulers, Drivers, Warehousemen and Helpers, Local Union No. 541, affiliated with International Brotherhood of Teamsters, AFL-CIO. Case 17-CA-16244**

April 23, 1997

**SUPPLEMENTAL DECISION AND ORDER  
REMANDING**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

On December 16, 1994, the National Labor Relations Board issued its Decision and Order in the above-captioned case.<sup>1</sup> The Board found, *inter alia*, that the Respondents violated Section 8(a)(5) and (1) of the National Labor Relations Act by failing to provide notice to and bargain on request with the Union concerning the January 10, 1992 decision to close the unionized Speaker Road plant, lay off unit employees, and reassign bargaining unit work to nonunit employees.<sup>2</sup> The Board further found that the Respondents intended the closure of the Speaker Road plant to be temporary, as demonstrated by the fact that the plant remained closed for only 2 months. The Board ordered the Respondents, *inter alia*, to make whole and reinstate to their former or substantially equivalent positions each of the laid-off Speaker Road unit employees. The Board also ordered the Respondents to bargain on request with the Union and to transfer back to the Speaker Road bargaining unit all bargaining unit work that was unlawfully transferred out of the unit to nonunit employees.<sup>3</sup> Respecting the transfer of the unit work, the Board left to compliance the determination of the quantity of the Respondents' work that constitutes "unit work" for purposes of effectuating the terms of the Order.<sup>4</sup>

On July 5, 1996, the United States Court of Appeals for the District of Columbia Circuit issued a decision affirming the Board's conclusions that the Respondents

violated Section 8(a)(5) of the Act as set forth above.<sup>5</sup> In addition, the court enforced all of the Board's Order except for the reinstatement remedy. Regarding the remedy, the court found that the Board correctly ordered the Respondents to return the unlawfully transferred work to the Speaker Road plant.<sup>6</sup> However, the court "decline[d] to require Geiger to rehire all Speaker Road employees until the [Board] decides how much work was improperly transferred from Speaker Road."<sup>7</sup> Thus, the court held that "restoring the status quo requires returning the unlawfully transferred work and reinstating *those union employees who would have done that work*" (emphasis added).<sup>8</sup> To support the reinstatement remedy, the court instructed the Board to determine how much concrete the Respondents would have produced at the Speaker Road plant if Geiger had maintained its established assignment practices. Specifically, the court directed the Board to "weigh the increase in nonunion-only customers together with the decrease in union-insistent customers to determine how much concrete the Speaker Road plant would have batched after 1991 had Geiger not deviated from its established practice."<sup>9</sup> The court held that only after making this determination could the Board determine the number of former Speaker Road unit employees entitled to reinstatement and backpay.

On October 17, 1996, the Board advised the parties that it had accepted the court's remand and invited statements of position. The Respondents, the General Counsel, and the Charging Party each filed a position statement.

We accept the court's holding as the law of the case, and we shall modify the Order to comply with the court's decision and shall remand this case to the Regional Director for issuance of a compliance specification and further proceedings consistent with the court's remand and with this Supplemental Decision and Order.

In his statement of position, the General Counsel contends that a compliance proceeding is necessary to resolve the issues raised by the court because there is insufficient evidence in the record of the unfair labor practice proceeding to determine with specificity any decline in customer demand for "union ready mix," any corresponding increase in "nonunion ready mix," and the amount of concrete that would have been batched from the Speaker Road plant after 1991 if the Respondents had not deviated from their established assignment practices. The General Counsel and the Charging Party maintain that the analysis required by

<sup>1</sup> 315 NLRB 1021.

<sup>2</sup> The Board also found that the Respondents violated Sec. 8(a)(5) and (1) by failing to bargain about the effects of the plant closing and failing to provide the Union with requested information.

<sup>3</sup> The Board found that bargaining unit work includes "all concrete customarily batched and delivered by the unit drivers from the Speaker Road plant to both union and nonunion jobsites, as well as concrete batched at nonunion plants and customarily delivered by the Speaker Road unit drivers because of factors such as job location and truck availability." In so finding, the Board found that job location and truck availability influenced the Respondents' job assignments and that the Speaker Road plant was the hub of the Respondents' operation. 315 NLRB at 1022.

<sup>4</sup> 315 NLRB at 1024 fn. 19.

<sup>5</sup> *Geiger Ready-Mix Co. v. NLRB*, 87 F.3d 1363.

<sup>6</sup> In this regard, the court agreed with the Board's definition of "unit work" as including concrete for both union-only and nonunion-only customers. *Id.* at 1370, 1371.

<sup>7</sup> *Id.* at 1371.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

the court is fact intensive and will require the Respondents to submit a significant amount of information concerning concrete sales during the relevant period. The Respondents, on the other hand, contend that further formal proceedings are not necessary and that the case should be assigned to a settlement judge because the only remaining issue is "what backpay, if any, should be paid to the reinstated employees." In this regard, the Respondents maintain that Geiger has to date complied with the court's "specific remedial determinations" and expressed a willingness to reinstate "certain employees in the order of seniority."

We note initially that the court did not disagree with the Board's decision that the amount of unlawfully transferred unit work should be determined through compliance proceedings. That is consistent with the Board's established practice of leaving the details of a remedy to compliance. However, as noted above, the court found that, absent a determination regarding the amount of the unlawfully transferred unit work, and consequently the amount of work that should be returned to the Speaker Road plant, an order requiring the reinstatement of all the unlawfully laid-off unit employees goes beyond the Board's remedial purpose of restoring the status quo ante. Therefore, in accord with the court's decision, we shall modify the Order to provide for the reinstatement of those former Speaker Road employees "who would have done the unlawfully transferred work."<sup>10</sup> Further, we shall remand the case to the Regional Director, who shall issue a compliance specification regarding the amount of unlawfully transferred unit work and the further issue, which the court found contingent on the amount of work, of the number of former Speaker Road unit employees entitled to reinstatement and backpay.<sup>11</sup>

<sup>10</sup> 87 F.3d at 1371.

See *Ultrasystems Western Constructors*, 316 NLRB 1243, 1244 fn. 7 (1995), on remand from 18 F.3d 251 (4th Cir. 1994) (where court found that Board order requiring reinstatement of all 65 applicants with backpay went beyond "neutralizing" the discrimination, Board modified its Order to direct the respondent to consider the applicants for hire and to provide backpay to those whom it would have hired but for its unlawful conduct. Board left to compliance the determination of whether the respondent would have hired any of the applicants and the related issue of backpay entitlement).

<sup>11</sup> See *Ultrasystems Western Constructors*, supra. See also *Special Mine Services*, 315 NLRB 847 (1994), on remand from 11 F.3d 88 (7th Cir. 1993) (where court found that Board provided inadequate explanation for ordering the respondent to restore the operation determined to have been discriminatorily located, Board remanded the case to the Regional Director for issuance of a compliance specification and further appropriate action).

We decline to issue an order requested by the General Counsel and the Charging Party requiring the Respondents to cooperate fully in the compliance investigation and to supply Region 17 with records disclosing the volume of its business and its customers during the relevant period. "It is beyond question that the Board strives to ensure full compliance with its remedial orders and to minimize potential problems of enforcement." *Cherokee Marine Terminal*, 287 NLRB 1080, 1081 (1988). However, in the absence of any indication

If, after the issuance of a compliance specification, it is determined that a hearing before an administrative law judge is necessary, all parties will be afforded the opportunity to present evidence on the issues remanded by the court.<sup>12</sup>

### ORDER

The National Labor Relations Board reaffirms its Order in the underlying proceeding, 315 NLRB 1021, 1024 (1994), as modified and set forth in full below, and orders that the Respondents, Geiger Ready-Mix Co. of Kansas City, Inc., Kansas City, Kansas; Geiger Ready-Mix Co. of Kansas, Inc., Lenexa, Kansas; Geiger Ready-Mix Co. of Missouri, Inc., Liberty, Missouri; and Geiger Ready-Mix Co., Inc.; a Single Employer, Leavenworth, Kansas, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively in good faith with Building Material, Excavating, Heavy Haulers, Drivers, Warehousemen and Helpers, Local Union No. 541, affiliated with International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of its full-time and regular part-time drivers, mechanics, and mechanic helpers employed in the counties of Jackson, Clay, Platte, Ray, Lafayette, Johnson, Bates, Henry, and Cass in Missouri, and Wyandotte, Johnson, Leavenworth, and Miami in Kansas, excluding all office clerical employees, supervisors, and guards as defined in the Act, and all other employees.

(b) Refusing to bargain with the Union with respect to any decision to shut down the Speaker Road, Kansas City, Kansas plant, to lay off bargaining unit employees employed at such facility, or to transfer bargaining unit work from that facility to nonunit employees, or refusing to bargain with the Union with respect to the effects on bargaining unit employees of any such shutdown, layoff, or transfer of bargaining unit work to nonunit employees.

(c) Unilaterally transferring bargaining unit work performed by bargaining unit employees employed at

that the Respondents have failed or will fail to cooperate or otherwise attempt to evade compliance, it is appropriate for the Region to rely on customary enforcement mechanisms, such as the Sec. 11 subpoena process, rather than on an order from the Board.

<sup>12</sup> Additionally, the Respondents may introduce at that hearing any evidence not available prior to the unfair labor practice proceeding bearing on the appropriateness of the remedy. See *Special Mine Services*, supra, 315 NLRB at 849 fn. 13.

The Respondents contend that the issues here should be resolved by a settlement judge without a formal hearing on a compliance specification. We find no merit in this contention. We note that after the issuance of a compliance specification and assignment of the case to an administrative law judge, a party may request a settlement judge from the chief administrative law judge, deputy chief judge, or associate chief judge in accordance with the procedures set forth in Sec. 102.35(13)(b) of the Board's Rules and Regulations.

the Speaker Road, Kansas City, Kansas plant, to nonunit employees, or assigning nonunit employees to perform such work, or unilaterally shutting down the plant, or laying off bargaining unit employees to accomplish such shutdown or transfer of bargaining unit work.

(d) Refusing to furnish the Union with information relative to the Union's duty as bargaining agent, including, but not limited to, lists of customers of any of the Respondents and lists of jobsites to which any of the Respondents have delivered concrete.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively in good faith with the Union concerning any decision to close down facilities employing bargaining unit employees, to transfer bargaining work out of the bargaining unit, or to assign bargaining unit work to nonunit employees, and bargain in good faith concerning the effects on employees of any such decisions.

(b) Within 14 days from the date of this Order, offer to those unit employees of the Speaker Road, Kansas City, Kansas plant who were laid off on January 10, 1992, and who would have done the unlawfully transferred unit work, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.

(d) Transfer back to the Speaker Road bargaining unit all bargaining unit work transferred out of that unit to nonunit employees.

(e) On request, furnish the Union with a list of customers and jobsites to which any of the Respondents have delivered concrete.

(f) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, post at the Respondents' facilities at Leavenworth, Kansas, and in the Metropolitan Kansas City area copies of the attached notice marked "Appendix."<sup>13</sup> Copies of the

notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondents' authorized representative, shall be posted by the Respondents and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondents have gone out of business or closed the facility involved in these proceedings, the Respondents shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondents at any time since July 8, 1992.

(h) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents have taken to comply.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 17 for instituting compliance proceedings and taking further appropriate action consistent with the court's decision and with this Supplemental Decision and Order.

#### APPENDIX

##### NOTICE TO EMPLOYEES

##### POSTED BY ORDER OF THE

##### NATIONAL LABOR RELATIONS BOARD

##### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively in good faith with Building Material, Excavating, Heavy Haulers, Drivers, Warehousemen and Helpers, Local Union No. 541, affiliated with International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of all full-time and regular part-time drivers, mechanics, and mechanic helpers, employed in the counties of Jackson, Clay, Platte, Ray, Lafayette, Johnson, Bates, Henry, and Cass in Missouri, and Wyandotte, Johnson, Leavenworth, and Miami in Kansas, excluding all office clerical employees, supervisors, and guards as defined in the Act, and all other employees.

WE WILL NOT refuse to bargain with the Union with respect to any decision to shut down the Speaker Road, Kansas City, Kansas plant, to lay off bargaining unit employees employed at such facility, or to transfer bargaining unit work from that facility to nonunit employees, and WE WILL NOT refuse to bargain with the Union with respect to the effects of any such shut-

<sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

down, layoff, or transfer of bargaining unit work to nonunit employees.

WE WILL NOT unilaterally transfer bargaining unit work performed by bargaining unit employees at the Speaker Road, Kansas City, Kansas plant, to nonunit employees, or assign nonunit employees to perform such work, or unilaterally shut down the plant, or lay off bargaining unit employees to accomplish such shut-down or transfer of bargaining unit work.

WE WILL NOT refuse to furnish the Union with information relative to its duty as bargaining agent, including, but not limited to, lists of any of the customers of any of our companies and lists of jobsites to which any of our companies have delivered concrete.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain collectively in good faith with respect to any decision to close down facilities employing bargaining unit employees, to transfer bargaining unit work out of the unit, or to assign bargaining unit work to nonunit employees, and WE WILL bargain in good faith with the Union concerning the effects on bargaining unit employees of these decisions.

WE WILL, within 14 days from the date of the Board's Order, offer to those unit employees of the Speaker Road, Kansas City, Kansas plant who were laid off on January 10, 1992, and who would have done the unilaterally transferred unit work, full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL transfer back to the Speaker Road bargaining unit all bargaining unit work transferred out of the unit to nonunit employees.

WE WILL, on request, provide the Union with a list of customers and jobsites to which any of our companies have provided concrete.

GEIGER READY-MIX CO. OF KANSAS CITY, INC.; GEIGER READY-MIX COMPANY OF KANSAS, INC.; GEIGER READY-MIX CO. OF MISSOURI, INC.; AND GEIGER READY-MIX CO., INC.; A SINGLE EMPLOYER